

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:

**ANTHONY JOSEPH GRIER
DEBTOR**

**CASE NO. 18-30555
CHAPTER 13**

**OBJECTION TO CLAIM #3 OF RUSHMORE LOAN MANAGEMENT
SERVICES AND REQUEST FOR A FULL ACCOUNTING OF LOAN**

Debtor, by and through undersigned counsel, objects to the claim of Rushmore Loan Management Services (“Rushmore”) filed herein as Claim number 3 and respectfully represents to the Court as follows:

1. Debtor filed a petition under Chapter 13 of the Bankruptcy Code in this Court on April 12, 2018.
2. Rushmore was listed as a secured creditor in Debtor's Schedule of Debts filed herein with a Deed of Trust on Debtor's real property located at 5426 Dolphin Lane (the “Property”).
3. Although Rushmore was not the original holder, this Deed of Trust was transferred to Rushmore on April 15, 2016.
3. On June 15, 2018, Rushmore filed in the records of this Court a Proof of Claim indicating that Rushmore is owed a secured claim of \$61,075.89 as well as a claim for arrears of \$32,685.00. Said claim is indicated as claim number 3 on the Claims Register of the records of this Court.
4. Debtor objects to claim number 3 filed by Rushmore and requests a full accounting for the following reasons:
 - a. In early 2014, Debtor filed an insurance claim with Travelers Insurance to cover damages from an electrical fire that occurred at the Property.
 - b. On March 18, 2014, Travelers Insurance sent a double endorsed check in the amount of \$12,425.46 made payable to Debtor and to Debtor's current mortgage company, Everhome Mortgage.
 - c. The check was supposed to be signed by both parties and then paid directly to CT Williams Restoration Inc. dba Servpro (“CT Williams”) for work that was performed as part of Debtor's insurance claim.

- d. Debtor signed and delivered the check to Everhome Mortgage who was supposed to sign and send the funds to CT Williams.
- e. However, that never happened.
- f. Everhome Mortgage received and cashed the check but never sent the funds to CT Williams.
- g. Instead, Everhome Mortgage held onto the funds and placed them in an escrow account.
- h. Since CT Williams was never paid, CT Williams filed a lawsuit and received a judgment against Debtor on October 1, 2014.
- i. Debtor continued trying to resolve matters with CT Williams and his mortgage company to no avail.
- j. On April 15, 2016, the loan and Deed of Trust to the Property was transferred to Rushmore.
- k. Debtor repeatedly tried reaching out to Rushmore to see what happened to the insurance proceeds and was eventually sent a letter by Rushmore on March 15, 2018.
- l. That letter informed Debtor that Rushmore was still holding the insurance proceeds of \$12,425.46 in a restricted escrow account and could not release the funds until they completed an escrow analysis.
- m. After getting no other answers and facing mounting debt, Debtor filed for Chapter 13 bankruptcy relief on April 12, 2018.
- n. To date, Debtor has been unable to get a clear answer or accounting of how Rushmore converted or applied the insurance proceeds stemming from March 2014.

WHEREFORE, Debtor respectfully prays the Court:

- 1. That Rushmore provide a full accounting of Debtor's loan; including, but not limited to, all debits, credits and more specifically the insurance proceeds of \$12,425.46.
- 2. That Rushmore's accounting be complete and legible.
- 3. That Rushmore be held accountable for all discrepancies and inconsistencies in their accounting.
- 4. That Attorney for Debtor be awarded the presumptive non-base fee of \$450.00; and
- 5. for such other and further relief as is just and proper.

Respectfully submitted this the 28th day of May, 2020.

/s/ David W. Hands
David W. Hands, Bar No. 28560
Attorney for Debtor
Hands Law Office, PLLC
3558 N. Davidson Street
Charlotte, NC 28205
(704) 248-7976
Dhands@handslawonline.com

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Objection to Claim #3 by either Electronic Case Filing as indicated below or by depositing copies of same in the exclusive care and custody of the United States Postal Service, with proper postage thereto affixed, addressed to the parties listed herein below.

Bankruptcy Administrator

Via Electronic Case Filing

Warren L. Tadlock
Chapter 13 Trustee
5970 Fairview Road, Ste 650
Charlotte, NC 28210

Via Electronic Case Filing

Anthony Grier
5426 Dolphin Lane
Charlotte NC 28215

MTGLQ Investors LP
c/o Rushmore Loan Management Serv.
PO Box 55004
Irvine, CA 92619

Respectfully submitted this the 28th day of May, 2020.

/s/ David W. Hands
David W. Hands, Bar No. 28560
Attorney for Debtor
Hands Law Office, PLLC
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NOTICE OF HEARING

Take Notice that an Objection has been filed by David W. Hands, attorney for Debtor. A copy of this Objection accompanies this notice.

Take further notice that any response to this objection should be filed with the Clerk of the Bankruptcy Court on or before **June 27, 2020**. A copy of any response should be served on the attorney identified below and upon other parties as required by law or Court order. Any response shall clearly identify the Objection to which the response is directed and it shall comply fully with any Local Bankruptcy Rules applicable.

Take further notice that a hearing will be held on this Objection as follows:

Location:	Time and Date:
US Court House – First Floor 401 W. Trade Street Charlotte, NC 28202	July 14, 2020 10:00 a.m.

Respectfully submitted this the 28th day of May, 2020

/s/ David W. Hands
David W. Hands, Bar No. 28560
Attorney for Debtor
Hands Law Office, PLLC
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Charlotte, NC 28205
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Dhands@handslawonline.com